

Foreign National (FN) Visa and Legal Permanent Residency (LPR) Sponsorship Policy and Procedures

Policy/Procedure

Section 1. PURPOSE AND SCOPE

Clark University values the expertise and talents of international scholars, international non-faculty employees and researchers and supports sponsorship of foreign nationals (FN) for both nonimmigrant and immigrant visas, as outlined in this policy. Visa sponsorships are based on the needs of the University and must qualify as a specialty occupation as defined by USCIS. The qualifying employee must have the appropriate educational and professional background.

This policy facilitates Clark's strategic recruitment, development, and retention of outstanding faculty and, in exceptional circumstances, international part-time faculty and non-faculty employees. This policy assists in the development of those goals and establishes the process by which Clark files petitions for FNs for temporary employment visas and/or legal permanent residency based on their positions at Clark.

The International Students & Scholars Office (ISSO) has been designated by the University to handle applications and information regarding immigration for staff, international students, and visiting scholars. The ISSO is Clark's liaison with immigration authorities and outside counsel. The ISSO also serves in a consultative role to the Office of Human Resources for international sponsorship related matters.

Section 2. Definitions

Where used in this policy, the following terms are defined as:

- **Foreign National (FN):** a person not a United States citizen who will require sponsorship by Clark for a visa/immigration status permitting employment with Clark, or a current Clark employee seeking legal permanent residency (LPR) or other types of visa support.
- **Eligible Dependents:** an FN's spouse and/or FN's unmarried child(ren) under the age of 21 who are or will be accompanying the FN in the United States.
- **Legal Permanent Resident (LPR):** a person who has been granted lawful permanent residence in the United States, typically with the accompanying right to live and work permanently anywhere in the United States. Often referred to as a "Green Card."

- **Non-Immigrant Visa (NIV):** any temporary U.S. visa that allows an FN to be employed in the United States for a limited time and for a specific purpose. Examples of nonimmigrant classifications used by Clark include: H-1B, TN, O1, E-3, F-1, and J-1.
- **Permanent Residency Process (PR):** the process by which an FN employee becomes a permanent resident alien, commonly referred to as obtaining a “green card.” In this policy, this refers to such a process where Clark is the effective sponsor under the employment-based immigration categories and not under any family-based, self-petition or other means of obtaining U.S. permanent resident alien status.
- **United States Citizenship and Immigration Services (USCIS):** the federal agency that processes nonimmigrant, immigrant, and naturalization petitions in the United States.
- **United States Department of Labor (DOL):** the federal agency that certifies Labor Condition Applications (LCAs) for purposes of H-1B and other petitions and determines whether an FN would be displacing a U.S. worker during the Labor Certification step of the employment-based permanent residency sponsorship.
- **United States Department of State (DOS):** the federal agency that determines the eligibility of a FN to enter the United States when issuing a visa.
- **Customs & Border Protection (CBP):** the federal agency that is tasked with maintaining border security and inspection of those seeking entry to the United States. University Policy

Section 3. Procedures and Enforcement

The Office of the Provost will fund sponsorship costs including the USCIS and attorney fees for faculty positions. The hiring department will fund sponsorship costs including USCIS and attorney fees for non-faculty employees and researchers.

Employee Retention of Immigration Counsel

Clark faculty, non-faculty employees, and researchers are permitted to engage independent immigration counsel to file petitions on their behalf. Should an employee engage counsel independently, Clark University will not reimburse for any legal fees incurred.

Payback Clause for PR Immigration Sponsorship Costs

In consideration of the PR immigration sponsorship provided by Clark, the sponsored foreign national may be required to agree to reimburse the university for certain

immigration-related costs incurred on their behalf if they voluntarily terminate their employment or are terminated for cause within three years of their immigration sponsorship approval.

In all instances, Clark will cover the advertising fees and legal fees for the first stage of PR sponsorship (the PERM labor certification process). The foreign national employee may be required to either cover in the first instance, or alternatively reimburse Clark, on a pro-rata basis, should their employment terminate (voluntarily or involuntarily) the government filing fees and/or legal fees for the remaining stages of this sponsorship, specifically the I-140 petition (stage two) and the I-485 Adjustment of Status application (stage three). Note that, in some instances, the PERM process may be bypassed entirely and, in these instances, Clark and/or the foreign national employee may cover the remaining portions as articulated above.

The repayment amount shall be calculated based on the total applicable immigration-related costs incurred on behalf of the sponsored foreign national. This Clause is inapplicable to H-1B fees and costs covered by Clark.

H1-B

In most cases, Clark will utilize the H1B visa for new hires. Occasionally, another visa category may be more appropriate as determined by Human Resources, the ISSO, and outside counsel. H-1B visas are specialty occupation visas for temporary employment. To secure an H-1B visa, the university must demonstrate that the job in question is one that requires special preparation, and that the person being sponsored has the required preparation and education. H-1B visas are available only for positions which require at least a Bachelor's degree. Clark University offers H-1B sponsorship only for full-time tenure-track faculty positions and, in exceptional circumstances, for part-time faculty, visiting faculty, full-time non-faculty employees and researchers.

An H-1B visa is valid for up to three years, and can be extended for one period of three years. Transferring an H-1B visa from another employer is a process similar to securing an H-1B. If the university decides to hire someone who is working for another employer on an H-1B visa, we still must go through the H-1B application process. The position must qualify as a specialty occupation as defined by USCIS. The qualifying employee must have the appropriate educational and professional background.

If the university decides to sponsor a faculty member, researcher or administrative employee for an H-1B visa, the university will pay all associated legal fees and filing fees for the employee. Visa expenses for the employee's family members are the responsibility of the employee.

The process for securing an H-1B visa typically takes three (3) to six (6) months.

Legal Permanent Residency (LPR)

Clark University sponsors only full-time faculty positions and, in very rare instances, non-faculty employees and researchers, for LPR. Visiting scholars, visiting faculty, students, temporary, and/or part-time staff employees are not eligible for sponsorship for LPR sponsorship.

In order to secure LPR for an employee, the university might be required to demonstrate that there isn't a qualified US citizen available for the position. A decision about whether a position will be eligible for sponsorship for LPR will be made by the Provost's Office for faculty positions and by Human Resources, in consultation with the Divisional Vice President, for staff positions.

The decision about whether to actually proceed with the application for LPR on behalf of the new employee will depend upon the employee's performance during the six-month probationary period. Should the university decide to go forward with sponsorship, initial application will be made 15 months after the initial job offer in order to take advantage of the competitive recruitment process so the position does not have to be reposted.

If the university decides to sponsor a faculty member for LPR, the university will typically pay all associated legal fees and filing fees for the employee, subject to the Payback Clause section of this Policy. Immigration expenses for the employee's family members are the responsibility of the employee.

The university begins the process of securing a green card 15 months after the initial offer of the tenure track position, and the process itself takes a minimum of least 15-18 months. Depending on the availability of immigrant visas for the employee's country of origin, it could take much longer.

Upon approval of legal permanent residency, the employee is typically responsible for the filing of the Form I-485 Adjustment of Status and covering any associated costs.

Sponsorship for Non-Immigrant Visas (J-1, TN, etc.)

With the approval of the division VP, Clark University may sponsor work-related non-immigrant visas for certain positions. The decision to provide non-immigrant sponsorship must be approved by the Provost for all faculty positions or by the Chief Human Resources Officer for all administrative positions prior to posting of the position.

If the university decides to sponsor a new hire for a non-immigrant work-related visa, the hiring division will pay all associated legal fees and filing fees for the employee. Visa expenses for the employee's family members are the responsibility of the employee.

The process for securing a non-immigrant visa varies with the country of origin, but Clark University does not meet the government threshold required to sponsor J-1 visas directly and does not currently have access to J-1 sponsorship. Please allow a minimum of 15 weeks to secure a TN, or O visa.

Related Information

Related Policies and Regulations

History/Revision Information

Responsible Office/Division: Office of Human Resources & Organizational Excellence

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